

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 95-09
(May 24, 1995)

Participation in State Bar's Silent Partner Program

Issue

May a judge participate in the State Bar's "Silent Partner" program?

Answer: No.

Facts

The State Bar of Arizona sponsors a program that allows lawyers to pose questions to more experienced members of the bar. The questions may deal with substantive and procedural legal issues as well as law office management matters.

Under the program, an inquiring attorney may call the State Bar office, and a Bar staff member refers the attorney to someone from a panel of volunteers. The volunteer provides advice, and the inquiring lawyer must then exercise his or her judgment on behalf of the client. The purpose of the program as described by the State Bar is: "There is no reason for attorneys to flounder, and possibly commit malpractice, when experienced lawyers can save them hours of time and spare them needless distress with a few minutes of sound advice."

Discussion

A judge's participation in this program is forbidden by Canon 4G, which states: "A judge shall not practice law." The Arizona Constitution also provides: "No justice or judge of any court of record shall practice law during his continuance in office." *See* Ariz. Const., Art. 6, § 28.

Providing advice on legal issues to an individual lawyer who will employ the advice on behalf of his client constitutes the practice of law. The client receives the benefit of the judge's counsel under this program, and the fact that the client's retained lawyer is the conduit for the judge's assistance does not alter the basic reality that the judge provides legal advice for the benefit of a specific client.

We recently applied Canon 4G in our Opinion No. 95-03. There we said that a justice of the peace could not practice law as a pro bono attorney. "There is no exception for . . . noble motives or [acting] without compensation." The only exceptions in Canon 4G are for the judge acting pro se and, without compensation, giving advice to and drafting or reviewing documents for a member of the judge's family.

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The harmfulness of judicial participation in this program is manifest. Instead of acting as impartial decision maker, the judge acts on behalf of the interests of one party. This is fundamentally inconsistent with the judicial function. Additional mischief may be caused by a judge who acts as counselor. The lawyer or client may place an unusual degree of reliance on the advice received because of the advisor's status as judge. Advice later thought to be mistaken by the client may cause embarrassment to the judiciary if the lawyer defends his or her actions by revealing that the lawyer was advised to so act by a judge.

We note that while providing advice to an individual lawyer and client on a particular matter is prohibited, a judge is not forbidden from speaking and writing for public consumption on matters "concerning the law, the legal system, the administration of justice and non-legal subjects." *See* Canon 4B.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 4B and 4G (1993).

Other References

Arizona Constitution, Article 6, § 28.

Arizona Judicial Ethics Advisory Committee, Opinion [95-03](#) (March 20, 1995).